THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 26235 of 2000

O r d e r:

The petitioner, who is a woman, after passing S.S.C. examination, did her I.T.I. in Electrician Trade. She underwent training as an apprentice with the respondents-APSRTC for a period of one year from 1990-1991.

While so, the respondents-APSRTC issued recruitment notification dated 15.06.1998 for filling up of the posts of Cleaner in Anantapur, Cuddapah and Kurnool Regions. The petitioner, having satisfied the eligibility criteria, submitted her application. The respondents called the petitioner for interview under the 50% apprentice quota, which she attended. However, her name did not find place in the selection list. Assailing her non-selection, she filed the present writ petition seeking to declare the action of the respondents in not following the rule of reservation in the case of women candidates for appointment to the posts of Cleaners, as illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submits that as per the recruitment notification, the selection of the post of Cleaner, shall be made on the basis of the marks secured by the candidates in I.T.I., year-wise seniority of apprenticeship in APSRTC and by following the rule of reservation. He submits that the petitioner is possessing the requisite educational qualifications and apprentice seniority with the respondents, and this apart, she being the only woman candidate, is entitled to be appointed under the 33% women reservation quota. He, however, submits that the respondents in the matter of selection of Cleaners, have not followed the rule of reservation in the case of women candidates, which is illegal and arbitrary.

The learned Standing Counsel for the respondents-APSRTC reiterating the stand taken by the respondents in the counter submitted that the petitioner was not selected because the Chief Manager (HRD), vide his letter No. A3/684(58)/98-HRD, dated 09.10.1998 issued a directive not to appoint women candidates having regard to the provisions of Section 66 of the Factories Act, 1948 which enable employment of women in factory except between 6.00 A.M. and 7.00 P.M. and also keeping in view the fact that duties attached to the post of Cleaner are strenuous. The learned Standing Counsel placed before this Court Circular No. PD-37/2003, dated 26.05.2003, issued by the Vice-Chairman and Managing Director, informing all officers concerned that the Government through their TR & B Department's letter No. 17525/Tr.III(2)/98-11, dated 06.02.2003, has accorded exemption for employing

women in the posts of Shramik, Mechanic and Chargeman (Printing), and instructing them not to recruit women candidates for the above posts. He submitted that since the Government has exempted employment of women candidates in certain posts, including that of Cleaner, non-selection of the petitioner to the post of Cleaner by the respondents under the women reservation quota of 33%, cannot be said to be illegal.

All the International Conventions and Declarations governing Human Rights have stressed that human rights for woman is inalienable and it is an integral and indivisible part of human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development and growth. Our Constitution in its articles provides for equality and prohibits discrimination on the ground of sex.

Like in the past, today's women are not confining themselves to the hearth. They have become more conscious and assertive of their rights. Today, women are excelling in all walks of national life and development. Their participation in the national development is becoming more and more aggressive. They are entering into domains, which hitherto were considered to be male dominated. Therefore, prohibiting women from being employed in jobs, which they are capable of handling with ease and dexterity on par with men, would be a retrograde step.

The respondents did not select the petitioner on the ground that Section 66 of the Factories Act, 1948 prohibited employment of women in factories. Section 66(1)(b) of the Factories Act, 1948 was struck down by the High Court of Madras in **Vasantha R. v. U.O.I** and by the Division Bench of this Court in **K.S. Triveni v. Union of India** holding that it was violative of the provisions of Articles 14, 15(3), 19(1)(g) and 21 of the Constitution. Therefore, non-selection of the petitioner to the post of Cleaner on the ground that provisions of Section 66 of the Factories Act, 1948, prohibited women being employed, is bad, illegal and arbitrary.

As per the recruitment notification, there can be no dispute that the petitioner satisfies the educational and apprentice ship. It is the case of the petitioner that the respondents have not applied the rule of reservation in the matter of appointment of Cleaners. While it is the case of the respondents that the petitioner though is qualified for the post of Cleaner, they have not selected her because Section 66 of the Factories Act, 1948, prohibited employing women in factory except between 6.00 A.M. and 7.00 P.M. Though the petitioner did not challenge the constitutional *vires* of Section 66(1)(b) of the Factories Act, 1948, but having regard to the fact that the respondents did not consider the case of the petitioner for appointment because of the provisions of Section 66 of the Factories Act, 1948, it is necessary to deal with the same. Section 66(1)(b) of the Factories Act, 1948, merely prohibits employing women in factory except between 6.00 A.M. and 7.00 P.M. It does not restrict women being employed in factory between 6.00 A.M. and 7.00 P.M. It is not the case of the respondents that Cleaners would be required to work only during 7.00 P.M. and 6.00 A.M., and it is not their case that the nature of duties attached to the post of Cleaner is so that women would not be in a position to handle it. When such is not their case, I fail to understand why women cannot be appointed as Cleaners either on their own

merit or by the application of rule of reservation.

Though the Government through their TR & B Department's letter No.17525/Tr.III(2)/98-11, dated 06.02.2003, have exempted women from being employed as Shramik, but having regard to the fact that Section 66 of the Factories Act, 1948, was struck down, and the exemption from employing women as Shramiks having been issued allegedly because of strenuous nature of the work, cannot be sustained, more so when the respondents failed to show that the duties attached to the post of Cleaner are arduous, strenuous and not capable of being discharged by women.

In the result, the writ petition is allowed. The respondents without having regard to the provisions of Section 66 of the Factories Act, 1948 which was already struck down by this Court, and without having regard to Circular No. PD-37/2003, dated 26.05.2003, shall consider the case of the petitioner for appointment to the post of Cleaner in 33% quota reserved for women. No costs.

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N.V. RAMANA, J.

Date: 15th February, 2006.

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